

AMENDED IN ASSEMBLY MARCH 29, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1449

Introduced by Assembly Member Bermudez

February 22, 2005

An act to add Section 594.2 to the Penal Code, relating to vandalism.

LEGISLATIVE COUNSEL'S DIGEST

AB 1449, as amended, Bermudez. Graffiti abatement.

Existing law provides that a person who maliciously defaces with graffiti or other inscribed material with respect to any real or personal property not his or her own is guilty of the crime of vandalism.

~~This bill would make it unlawful for any person owning, leasing, renting, occupying, or having charge or possession of any, in regard to any publicly or privately owned real property near a state-maintained highway to maintain or allow to be maintained graffiti on that property for an unreasonable period of time, as defined. The bill would, require city or county officials to notify the Department of Transportation upon discovery of that graffiti on the property, and would require the department to serve an order for graffiti removal on the property owner, thereby imposing a state-mandated local program as specified. The bill would authorize require the department, or city and county in cooperation with the department, to take certain abatement action if the property owner does not respond, and would authorize the billing of the owner for certain associated expenses. The bill would provide for creation of a lien on the property if the property owner fails to pay, and possible foreclosure and sale of the property. The bill would also require the owner of the property to give testimony as to the amount of damage in~~

~~a criminal prosecution of an individual responsible for the graffiti, and would authorize the department or a city or county taking abatement action to testify as to the amount of damage if the property owner is unwilling or unable to do so. The bill would enact other related provisions.~~

By imposing additional duties on local governments in connection with notifying the Department of Transportation and cooperating with the department in the abatement of graffiti, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Graffiti on public and private properties is a blighting
- 4 factor.
- 5 (b) Graffiti encourages other acts of malicious vandalism.
- 6 (c) Graffiti depreciates the value of adjacent and surrounding
- 7 properties.
- 8 (d) Graffiti is inconsistent with State of California's aesthetic
- 9 standards.
- 10 (e) The existence of graffiti tends to breed community
- 11 discontent and criminal activity.
- 12 (f) The placement of graffiti is often done in connection with
- 13 gang activities.
- 14 (g) Graffiti on or near freeway overpasses can be a visual
- 15 distraction to drivers.
- 16 (h) The public interest, convenience, and necessity require the
- 17 adoption and implementation of measures to abate and or remove
- 18 graffiti adjacent to freeways.

SEC. 2. Section 594.2 is added to the Penal Code, to read:

~~594.2. (a) It shall be unlawful for any person owning, leasing, renting, occupying, or having charge or possession of any privately owned real property that traverses, abuts, or is contained within the curtilage of a highway owned and maintained by Department of Transportation, to maintain or to allow to be maintained graffiti on that property for an unreasonable period of time.~~

~~(b) As used in this paragraph, "unreasonable period of time" shall mean within 10 calendar days of discovery by the person or within 21 calendar days after the person receives notification by a representative of the State of California or a local government agency that graffiti has been observed on the property.~~

~~(c)~~

594.2. Upon discovery of graffiti on publicly and privately owned permanent structures, which are located on publicly or privately owned real property, that traverses, abuts, or is contained within the curtilage of a highway owned and maintained by Department of Transportation, city or county officials, as applicable, shall notify the department. The department shall serve on the property owner written notice with an order to remove graffiti *within* 21 days from the issuance of the notice. A specific date by which the graffiti must be removed shall be included, along with a statement that if the property owner does not remove the graffiti within this time, the department, or the *department in cooperation with the city or county in which the graffiti is located,* ~~may~~ *shall* cause the graffiti to be removed and may make the costs incurred in this work a personal debt of the property owner or a lien against the property.

~~(d)~~

(b) The graffiti, if not removed by the owner or an agent of the owner within the 21-day period, shall be abated by the department, or by the city or county in cooperation with the department. The department, or city or county, is hereby authorized to ~~remove or otherwise abate the graffiti and~~ bill the property owner for all associated expenses.

~~(e)~~

(c) Upon a failure by the property owner to remit payment to the department, or city or county within 30 days *of the date listed*

1 *on the bill*, the amount of the payment due shall become a lien on
2 the property and shall be recorded. If the lien is not removed with
3 one year of the date it becomes effective, the department, or city
4 or county may ~~take other legal steps, including~~ *commence* a
5 foreclosure action leading to sale of the property.

6 ~~(f) Graffiti, the removal or abatement of which would be~~
7 ~~inherently dangerous due to its location on the property, or which~~
8 ~~could negatively affect the motoring public as a visual or~~
9 ~~physical hazard, shall be coordinated with the department if it is~~
10 ~~to be removed or abated by a city or county.~~

11 ~~(g) The owner of the property shall be available to give~~
12 ~~testimony or provide evidence of the amount of damage and~~
13 ~~expenses incurred as a result of the graffiti in a prosecution of an~~
14 ~~individual pursuant to Section 594. If the owner of the property is~~
15 ~~unwilling, or unable to provide that testimony and evidence, the~~
16 ~~department, or a city or county may act on the owner's behalf to~~
17 ~~provide this evidence if any of those entities have incurred any~~
18 ~~reimbursed or unreimbursed expenses as a result of the graffiti~~
19 ~~removal on the owner's property pursuant to this section. Legal~~
20 ~~expenses incurred by the State of California in the testimony or~~
21 ~~presentation of that evidence shall not be the responsibility of the~~
22 ~~property owner.~~

23 ~~(h) A violation of this section is not a crime.~~

24 ~~(d) If a person has been charged with the vandalism that~~
25 ~~produced the graffiti on the owner's property, the owner shall~~
26 ~~not be subject to the abatement procedures contained in~~
27 ~~subdivisions (a) to (c), inclusive, unless the charges are later~~
28 ~~dropped or the defendant is not convicted or does not enter a~~
29 ~~plea of nolo contendere for the offense that produced the graffiti.~~

30 SEC. 3. If the Commission on State Mandates determines that
31 this act contains costs mandated by the state, reimbursement to
32 local agencies and school districts for those costs shall be made
33 pursuant to Part 7 (commencing with Section 17500) of Division
34 4 of Title 2 of the Government Code.